

109TH CONGRESS  
1ST SESSION

# H. R. 3704

To provide for establishment of a Border Patrol Auxiliary.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2005

Mrs. DRAKE (for herself, Mr. MARCHANT, Mr. MICA, and Mr. BURGESS) introduced the following bill; which was referred to the Committee on Homeland Security

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## A BILL

To provide for establishment of a Border Patrol Auxiliary.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Protecting America  
5       Together Act of 2005”.

6       **SEC. 2. BORDER PATROL AUXILIARY.**

7       (a) ESTABLISHMENT.—

8               (1) IN GENERAL.—The Secretary of Homeland  
9       Security (in this Act referred to as the “Secretary”)  
10      shall establish a Border Patrol Auxiliary (in this Act  
11      referred to as the “Auxiliary”) as an organization

1 under the direction of the Secretary. For command,  
2 control, and administrative purposes, the Auxiliary  
3 shall include such organizational elements and units  
4 as are approved by the Secretary. The Auxiliary or-  
5 ganization and its officers shall have such rights,  
6 privileges, powers, and duties as may be granted to  
7 them by the Secretary, consistent with this Act and  
8 other applicable provisions of law. The Secretary  
9 may delegate to officers of the Auxiliary the author-  
10 ity vested in the Secretary by this section, in the  
11 manner and to the extent the Secretary considers  
12 necessary or appropriate for the functioning, organi-  
13 zation, and internal administration of the Auxiliary.

14 (2) DUTIES.—Not later than 6 months after  
15 the date of the enactment of this Act, the Secretary  
16 shall specify how best to use the Auxiliary. It is the  
17 intent of Congress that the Auxiliary be used to no-  
18 tify the Border Patrol if members see illegal aliens  
19 attempting to cross into the United States.

20 (b) EXEMPTION FROM LIABILITY.—Each organiza-  
21 tional element or unit of the Border Patrol Auxiliary orga-  
22 nization (but excluding any corporation formed by an or-  
23 ganizational element or unit of the Auxiliary under sub-  
24 section (c)), shall, except when acting outside the scope

1 of its authority, at all times be deemed to be an instrumen-  
2 tality of the United States, for purposes of the following:

3 (1) Chapter 26 of title 28, United States Code  
4 (popularly known as the Federal Tort Claims Act).

5 (2) Other matters related to noncontractual  
6 civil liability.

7 (c) INCORPORATION.—The national board of the  
8 Auxiliary, and any Auxiliary district or region, may form  
9 a corporation under State law in accordance with policies  
10 established by the Secretary.

11 (d) LIMITATIONS.—In no case shall a member of the  
12 Auxiliary bear firearms in connection with carrying out  
13 duties as such a member.

14 **SEC. 3. ELIGIBILITY, ENROLLMENTS.**

15 The Auxiliary shall be composed of citizens of the  
16 United States and its territories and possessions, who by  
17 reason of their special training or experience are deemed  
18 by the Secretary to be qualified for duty in the Auxiliary,  
19 and who may be enrolled therein pursuant to applicable  
20 regulations. The Secretary shall specify, not later than 6  
21 months after the date of the enactment of this Act, the  
22 qualifications for members in the Auxiliary, including spe-  
23 cial training or experience required.

1 **SEC. 4. MEMBERS OF THE AUXILIARY; STATUS.**

2 (a) GENERAL EXEMPTION FROM TREATMENT AS  
3 FEDERAL EMPLOYEE.—Except as otherwise provided in  
4 this Act, a member of the Border Patrol Auxiliary shall  
5 not be considered to be a Federal employee and shall not  
6 be subject to the provisions of law relating to Federal em-  
7 ployment, including those relating to hours of work, rates  
8 of compensation, leave, unemployment compensation, Fed-  
9 eral employee benefits, ethics, conflicts of interest, and  
10 other similar criminal or civil statutes and regulations gov-  
11 erning the conduct of Federal employees. However, noth-  
12 ing in this subsection shall constrain the Secretary from  
13 prescribing standards for the conduct and behavior of  
14 members of the Auxiliary.

15 (b) TREATMENT AS FEDERAL EMPLOYEE FOR LIM-  
16 ITED PURPOSES.—A member of the Auxiliary while as-  
17 signed to duty shall be deemed to be a Federal employee  
18 only for the purposes of the following:

19 (1) The provisions referred to in section 3(b).

20 (2) Compensation for work injuries under chap-  
21 ter 81 of title 5, United States Code.

22 (3) The resolution of claims relating to damage  
23 to or loss of personal property of the member inci-  
24 dent to service under the Military Personnel and Ci-  
25 vilian Employees' Claims Act of 1964 (31 U.S.C.  
26 3721).

1       (c) REMOVAL OF ACTIONS.—A member of the Auxil-  
2 iary, while assigned to duty, shall be deemed to be a per-  
3 son acting under an officer of the United States or an  
4 agency thereof for purposes of section 1442(a)(1) of title  
5 28, United States Code.

6 **SEC. 5. DISENROLLMENT.**

7       Members of the Auxiliary may be disenrolled pursu-  
8 ant to applicable regulations of the Secretary.

9 **SEC. 6. USE OF MEMBER'S FACILITIES.**

10       The Department of Homeland Security may utilize  
11 for any purpose incident to carrying out its functions and  
12 duties as authorized by the Secretary any vehicle at its  
13 disposition for any of such purposes by any member of  
14 the Auxiliary, by any corporation, partnership, or associa-  
15 tion, or by any State or political subdivision thereof.

16 **SEC. 7. AVAILABILITY OF APPROPRIATIONS.**

17       (a) IN GENERAL.—Appropriations of the Border Pa-  
18 trol shall be available for the payment of actual necessary  
19 traveling expense and subsistence, or commutation of ra-  
20 tion allowance in lieu of subsistence, of members of the  
21 Auxiliary assigned to authorized duties and for actual nec-  
22 essary expenses of operation of any vehicle when assigned  
23 to Border Patrol duty, but shall not be available for the  
24 payment of compensation for personal services, incident  
25 to such operation, other than to personnel of the Border

1 Patrol. The term “actual necessary expenses of oper-  
2 ation”, as used in this section, shall include payment for  
3 fuel, oil, water, supplies, provisions, replacement or repair  
4 of equipment, repair of any damaged vehicle and for the  
5 constructive or actual loss of any vehicle where it is deter-  
6 mined, under applicable regulations, that responsibility for  
7 the loss or damage necessitating such replacement or re-  
8 pair of equipment, or for the damage or loss, constructive  
9 or actual, of such vehicle rests with the Border Patrol.

10 (b) INTEREST.—The Secretary may pay interest on  
11 a claim under this section in any case in which a payment  
12 authorized under this section is not made within 60 days  
13 after the submission of the claim in a manner prescribed  
14 by the Secretary. The rate of interest for purposes of this  
15 section shall be the annual rate established under section  
16 6621 of the Internal Revenue Code of 1954.

17 **SEC. 8. ASSIGNMENT AND PERFORMANCE OF DUTIES.**

18 No member of the Auxiliary, solely by reason of such  
19 membership, shall be vested with, or exercise, any right,  
20 privilege, power, or duty vested in or imposed upon the  
21 personnel of the Border Patrol, except that any such mem-  
22 ber may, under applicable regulations, be assigned duties,  
23 which, after appropriate training and examination, he has  
24 been found competent to perform, to effectuate the pur-  
25 poses of the Auxiliary. No member of the Auxiliary shall

1 be placed in charge of a vehicle assigned to the Border  
2 Patrol duty unless he has been specifically designated by  
3 authority of the Secretary to perform such duty. Members  
4 of the Auxiliary, when assigned to duties as herein author-  
5 ized shall, unless otherwise limited by the Secretary, be  
6 vested with the same power and authority, in the execution  
7 of such duties, as members of the regular Border Patrol  
8 assigned to similar duty. When any member of the Auxil-  
9 iary is assigned to such duty he may, pursuant to regula-  
10 tions issued by the Secretary, be paid actual necessary  
11 traveling expenses, including a per diem allowance in con-  
12 formity with standardized Government travel regulations  
13 in lieu of subsistence, while traveling and while on duty  
14 away from his home. No per diem shall be paid for any  
15 period during which quarters and subsistence in kind are  
16 furnished by the Government, and no per diem shall be  
17 paid for any period while such member is performing duty  
18 on a vehicle.

19 **SEC. 9. INJURY OR DEATH IN LINE OF DUTY.**

20 When any member of the Auxiliary is physically in-  
21 jured or dies as a result of physical injury incurred while  
22 performing any duty to which he has been assigned by  
23 competent Border Patrol authority, such member or his  
24 beneficiary shall be entitled to the same benefits provided  
25 for temporary members of the Patrol who suffer physical

1 injury or death resulting from physical injury incurred in-  
2 cident to service. Members of the Auxiliary who incur  
3 physical injury or contract sickness or disease while per-  
4 forming any duty to which they have been assigned by  
5 competent Border Patrol authority shall be entitled to the  
6 same hospital treatment afforded members of the Border  
7 Patrol. The performance of a duty as the term is used  
8 in this section includes time engaged in traveling back and  
9 forth between the place of assigned duty and the perma-  
10 nent residence of a member of the Auxiliary.

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